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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 234

MISSISSIPPI PUBLISHING CORPORATION,

Petitioner,

vs.

DENNIS MURPHREE,

Respondent

ADDITIONAL MEMORANDUM FOR PETITIONER

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Since submitting this case our attention has been directed to the report of Charles J. Zinn, Counsel, House of Representatives, Committee on Revision of the Laws, dated October 30, 1945. The report is in the following language:

“House of Representatives,
Committee on Revision of the Laws,
Washington, October 30, 1945.

“Hon. Eugene J. Keogh,
Chairman, Committee on Revision of the Laws,
House of Representatives.

“DEAR MR. KEOGH: I am submitting herewith a preliminary draft of the complete proposed revision and codification of the Federal Judicial Code. This draft contains the text of the laws together with reviser's notes to each section.

"Although the draft is subject to further revision and corrections, it is hoped that even in its present form it will be useful in showing our method of approach and in evoking helpful suggestions.

"Respectfully yours,

CHARLES J. ZINN,
Counsel."

"FOREWORD

"The Committee on Revision of the laws is now engaged in drafting a substantive revision of existing Federal laws relating to the courts and the judiciary. The majority of these laws may now be found classified and codified in title 28 of the United States Code, although many additional provisions relating to the specific subject matter of other titles of the code are to be found in such other titles.

"There has been no complete revision or codification of these laws since the enactment of the Judicial Code in 1911, with the result that these laws of the United States are now in a more chaotic state than were the internal-revenue laws prior to the enactment of the Internal Revenue Code in 1939.

"Many of the sections of the 1911 Judicial Code have been superseded although not specifically repealed. The archaic language of the Revised Statutes of 1874 is still preserved in many instances in that code. Many provisions have been superseded by the Rules of Civil Procedure promulgated by the Supreme Court which became effective in 1939. Our courts and lawyers must, therefore, administer justice with outmoded, unscientific, inadequate, and unsatisfactory tools. Most of our States are equipped with modern codes governing their citizens, and it is only fitting that the Federal laws on this and other subjects be revised and codified to do away with the chaos and uncertainty surrounding our laws.

"SCOPE OF THIS PRELIMINARY DRAFT

"The preliminary draft submitted herewith covers the entire proposed revision which has been divided

into six parts. The language of the sections has been modernized and surplusages have been eliminated. Where desirable for clarity and brevity sections and subsections have been consolidated.

"Each section in the preliminary draft is followed by a comprehensive reviser's note, stating the source of the section and explaining fully the changes made.

"It is important to note that this is only a preliminary draft subject to correction and amendment and is submitted primarily for the purpose of indicating the mode of procedure adopted in this revision and to present something concrete to the public upon which suggestions may be offered. A number of suggestions already received by the committee, not yet incorporated in the draft, will be inserted later, together with certain revisions and corrections of this draft presently being considered by the revisers.

"REVISION STAFF

"The Committee on Revision of the Laws has engaged the services of the West Publishing Co. of St. Paul, Minn., and the Edward Thompson Co. of Brooklyn, N. Y., both well-known law publishing companies who have assisted the committee heretofore in the preparation of the several editions of the United States Code and supplements thereto and the revised Criminal Code which has been embodied in H. R. 2200, Seventy-ninth Congress. These companies have been working very closely with this committee's counsel, Charles J. Zinn, of New York, and John F. X. Finn, of New York. An advisory committee of distinguished personnel has carefully reviewed the work of the revisers. It consists of Hon. Floyd E. Thompson, Chairman, of Chicago, Ill., a former chief justice of the Illinois Supreme Court and president of the Chicago Bar Association; Hon. Justin Miller, of Washington, D. C., former associate justice of the United States Court of Appeals for the District of Columbia; Hon. John B. Sanborn, of St. Paul, Minn., judge of the United States Circuit Court of Appeals for the Eighth Circuit; Hon. Walter

P. Armstrong, of Memphis, Tenn., former president of the American Bar Association; and Hon. John Dickenson, of Philadelphia, Pa. The combined editorial staffs of the two companies have been supplemented by William W. Barron, former Chief of the Appellate Section, Criminal Division of the Department of Justice, who is acting as reviser, and Frank J. Parker, assistant United States attorney for the Eastern District of New York. In addition to the foregoing, Hon. John J. Parker, of Charlotte, N. C., senior circuit judge of the United States Circuit Court of Appeals for the Fourth Circuit is acting as a judicial consultant. Hon. Alexander Holtzoff, United States District Judge for the District of Columbia, secretary of the Supreme Court Advisory Committee on the Rules of Criminal Procedure, and Prof. James W. Moore, of Yale University, Chief Research Assistant to the Supreme Court Advisory Committee on Rules of Civil Procedure, are acting as special consultants.

"Invaluable assistance has been rendered to the revision staff by the Judicial Conference Committee on the Judicial Code, appointed by Chief Justice Stone, consisting of United States Circuit Judge Albert B. Maris, chairman, and United States District Judges Clarence G. Galston, of the Eastern District of New York, and William F. Smith, of the District of New Jersey."

EUGENE J. KEOGH,
Chairman, Committee on
Revision of the Laws.

October 31, 1945."

The suggested statutes dealing with venue are found at page 265 and with explanatory notes are in the following language:

Section 1391. RESIDENCE GENERALLY.

(a) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is

doing business, and such judicial district shall be regarded as the residence of such corporations for the purposes of this section.

(b) A civil action wherein jurisdiction is founded only on diversity of citizenship may be prosecuted only in the judicial district where all plaintiffs or all defendants reside.

(c) Except as otherwise provided, a civil action may be prosecuted only in the judicial district where all defendants reside.

(d) A district court may proceed as to parties before it although one or more dispensable parties defendant do not reside within its district, but its judgment shall be without prejudice to such absent parties.

REVISER'S NOTE

Section Revised

Based on Title 28 U. S. C., 1940 ed., Sections 111, 112 (Mar. 3, 1911, ch. 231, Sections 50, 51, 36 Stat. 1101; Sept. 19, 1922, ch. 345, 42 Stat. 849; Mar. 4, 1925, ch. 526, Section 1, 43 Stat. 1264; Apr. 16, 1936, ch. 230, 49 Stat. 1213).

Section consolidates section 111 of Title 28 U. S. C., 1940 ed., with part of section 112 of such title.

The portion of section 112 of Title 28 U. S. C., 1940 ed., relating to venue generally constitutes this section and the parts relating to arrest of the defendant, venue and process in stockholders' actions constitute sections 1401, 1693 and 1695 of this title.

Word "action" was substituted for "suit" in view of Rule 2 of the Federal Rules of Civil Procedure.

Word "reside" was substituted for "whereof he is an inhabitant" for clarity inasmuch as "inhabitant" and "resident" are synonymous. See *Ex Parte Shaw*, 1892,

12 S. Ct. 935, 145 U. S. 444, 36 L. Ed. 768; *Standard Stoker Co., Inc., v. Lower*, D. C. 1931, 46 F. 2d 678; *Edgewater Realty Co. v. Tennessee Coal, Iron & Railroad Co.*, D. C. 1943, 49 F. Supp. 807.

References to "all plaintiffs" and "all defendants" were substituted for references to "the plaintiff" and "the Defendant," in view of many decisions holding that the singular terms were used in a collective sense. See *Smith v. Lyon*, 1890, 10 S. Ct. 303, 133 U. S. 315, 33 L. Ed. 635; *Hooe v. Jamieson*, 1897, 17 S. Ct. 596, 166 U. S. 395, 41 L. Ed. 1049; and *Fetzer v. Livermore*, D. C. 1926, 15 F. 2d 462.

Subsection (d) is a concise revision of section 111 of Title 28 U. S. C., 1940 ed., without change of substance.

In such subsection, references to defendants "found" within a district or voluntarily appearing were omitted. The use of the word "found" made section 111 of Title 28 U. S. C., 1940 ed., ambiguous. The argument that an action could be brought in the district where one defendant resided and a non-resident defendant was "found," was rejected in *Camp v. Gress*, 1919, 39 S. Ct. 478, 250 U. S. 308, 63 L. Ed. 997. However, this ambiguity will be obviated in the future by the omission of such reference.

Changes were made in phraseology.

Section 1392. DEFENDANTS OR PROPERTY IN DIFFERENT-DISTRICTS IN SAME STATE.

(a) Any civil action, not of a local nature, against defendants residing in different districts in the same State, may be prosecuted in any of such districts.

(b) Any civil action, of a local nature, involving land or other subject matter of a fixed character located in different districts in the same State, may be prosecuted in any of such districts.

REVISER'S NOTE

Section Revised

Based on Title 28 U. S. C., 1940 ed., Sections 113, 116 (Mar. 3, 1911, ch. 231, Sections 52, 55, 36 Stat. 1101, 1102):

Section consolidates section 113 of Title 28 U. S. C., 1940, ed., with section 116 of such title.

Last sentence of section 113 of Title 28 U. S. C., 1940 ed., relating to execution on judgments or decrees was omitted as covered by section 2001 et seq. of this title.

Words "civil action" were substituted for "suit" in view of Rule 2 of the Federal Rules of Civil Procedure.

Words "against a single defendant, inhabitant of such State, must be brought in the district where he resides" were omitted as covered by section 1391 of this title.

Words "and the court in which it is brought shall have jurisdiction to hear and decide it, and to cause *mesne* or final process to be issued and executed, as fully as if the said subject matter were wholly within the district for which such court is constituted" were omitted as surplusage and fully covered by Rule 4 of the Federal Rules of Civil Procedure. Said Rule also covers the following omitted language: "A duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides."

Changes were made in phraseology.

Section 1393. DIVISIONS; SINGLE DEFENDANT; DEFENDANTS IN DIFFERENT DIVISIONS.

(a) Any civil action, not of a local nature, against a single defendant in a district containing more than one division may be prosecuted only in the division where he resides.

(b) Any such action, against defendants residing in different divisions of the same district, may be prosecuted in any of such divisions.

REVISER'S NOTE

Section Revised

Based on Title 28 U. S. C., 1940 ed., Section 114 (Mar. 3, 1911, ch. 231, Section 53, 36 Stat. 1101).

Second sentence of section 114 of Title 28 U. S. C., 1940 ed., relating to *mesne* and final process was omitted as covered by section 1692 of this title and Rule 4 of the Federal Rules of Civil Procedure.

The third and fourth sentences of section 114 of Title 28 U. S. C., 1940 ed., relating to transfer of criminal proceedings from divisions of district courts were omitted as fully covered by Rule 19 of the Federal Rules of Criminal Procedure.

The last sentence of section 114 of Title 28 U. S. C., 1940 ed., relating to removal of cases from State to Federal district courts, is incorporated in section 1441 of this title.

Changes were made in phraseology.

We submit to the court that this information is of great interpretive value. The preparation of the statutes was had by a distinguished corps of editors and lawyers, some of whom were connected with the Advisory Committee for the preparation of the Rules of Civil Procedure for use in said courts. It is significant that the statutes as redrafted, dealing with the venue of corporations, consists largely of clarification of previous statutes and omitting ancient and ambiguous descriptive terms. From this memorandum it appears:

First: That the rule which we have contended for in this case, that even where the plaintiff was a resident of

the district it was necessary that the foreign corporation be founded in the district, is made perfectly clear.

Second: The long line of cases decided by this court wherein it is held that a foreign corporation may only be sued by a resident in the district where it is transacting business is again finding its expression in codification.

Third: It is perfectly evident from this information, together with the report of the Chairman of the Judiciary Committee of the House of Representatives, reporting the rules of Civil Procedure with the comments thereupon by the Advisory Committee, that neither the Committee nor the House of Representatives were of the opinion that the suability, that is to say that the place of suit of a foreign corporation was not in any manner being changed or modified.

Fourth: Recently, that the announcements by the court of the rule set forth in the codification hereinbefore referred to would be entirely consistent in the light of Congressional history, to which the court's attention was directed in our reply brief.

This matter has just come to our attention and we trust that it is not improper for us to submit the same.

Respectfully submitted,

WILLIAM H. WATKINS,

P. H. EAGER, JR.,

RALPH B. AVERY,

MRS. ELIZABETH HULEN,

Jackson, Mississippi,

Attorneys for Petitioner.

E. C. BREWER,

Clarksdale, Mississippi,

Of Counsel.

I, William H. Watkins, of Counsel for the Petitioner in the above entitled case, certify that I have this day delivered to Rufus Creekmore and H. H. Creekmore, Counsel for Respondent, each a true and correct copy of the foregoing additional memorandum on behalf of petitioner and have mailed a copy thereof by United States mail to W. E. Gore, Jackson, Mississippi, likewise of counsel for the respondent.

This the 17th day of December, 1945

WM. H. WATKINS,
Of Counsel.

(1902)